

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

BOARD OF TRUSTEES OF THE LABORERS)	
HEALTH AND WELFARE TRUST FUND FOR)	
NORTHERN CALIFORNIA; BOARD OF)	No. C-06-2045 SC
TRUSTEES OF THE LABORERS VACATION-)	ORDER GRANTING
HOLIDAY TRUST FUND FOR NORTHERN)	PLAINTIFFS' MOTION
CALIFORNIA; BOARD OF TRUSTEES OF)	FOR ENTRY OF
THE LABORERS PENSION TRUST FUND FOR)	<u>DEFAULT JUDGMENT</u>
NORTHERN CALIFORNIA; and BOARD OF)	
TRUSTEES OF THE LABORERS TRAINING)	
AND RETRAINING TRUST FUND FOR)	
NORTHERN CALIFORNIA,)	
)	
Plaintiffs,)	
)	
v.)	
)	
DRONKANOKI, INC., a California)	
Corporation; and TRAVIS DEAN)	
ANDERSON, an Individual,)	
Social Security Administration,)	
)	
Defendant.)	

I. INTRODUCTION

Plaintiffs Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California et al. ("Plaintiffs" or "Trust Funds") brought this action against Defendants Dronkanoki, Inc. ("Defendant Dronkanoki") and Travis Dean Anderson ("Defendant Anderson") (together "Defendants") under the National Labor

1 Management Act, 29 U.S.C. § 185, and the Employee Retirement
2 Income Security Act ("ERISA"), 29 U.S.C. § 1132. Defendants did
3 not respond, and, on May 22, 2006, default was entered against
4 Defendants. On July 19, 2006, Plaintiffs made a motion for
5 default judgment. Defendants have not appeared.

6 For the reasons stated herein, Plaintiffs' motion for default
7 judgment is GRANTED.

8
9 **II. BACKGROUND**

10 Plaintiffs filed suit against Defendants on March 17, 2006.
11 See Docket No. 1. The Complaint states that Defendants failed "to
12 make trust fund contributions and to submit to an audit of their
13 books and records as demanded of them by [Defendants], and as
14 required by its collective bargain agreements, by the Trust
15 Agreements and by provisions of federal law." Compl. at 2.

16 On April 10, 2006, Defendants were both personally served
17 with the Summons and Complaint. See Docket No. 5. After
18 Defendants did not respond to the Complaint, Plaintiffs requested
19 entry of default, which was entered on May 22, 2006. See Docket
20 No. 8.

21 Plaintiffs filed the present Motion on July 19, 2006, which,
22 along with related filings, was served on Defendants by mail on
23 the same day. See Docket Nos. 12-16. According to the Motion and
24 its accompanying declarations, it is "reasonably believed that
25 [Defendant] Travis Dean Anderson is neither an infant nor
26 incompetent person nor in military or uniformed service or
27 otherwise exempt under the Soldiers' and Sailors' Civil Relief Act

of 1940 . . . or the Service Civil Relief Act of 2003." Pls' Mem. at 6.

III. LEGAL STANDARD

After entry of default, the Court may enter a default judgment. Fed. R. Civ. P. 555. Its decision whether to do so, while "discretionary," Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980), is guided by several factors.

As a preliminary matter, the Court must "assess the adequacy of the service of process on the part[ies] against whom default is requested." Board of Trustees of the N. Cal. Sheet Metal Workers v. Peters, No. C-00-0395 VRW, 2000 U.S. Dist. LEXIS 19065, at *2 (N.D. Cal. Jan. 2, 2001).

If the Court determines that service was sufficient, it may consider the following factors in its decision on the merits of a motion for default judgment:

(1) the possibility of prejudice to the plaintiff, (2) the merits of plaintiff's substantive claim, (3) the sufficiency of the complaint, (4) the sum of money at stake in the action; (5) the possibility of a dispute concerning material facts; (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits.

Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). In doing so "the factual allegations of the complaint . . . will be taken as true." TeleVideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987)(internal quotations omitted).

Should the Court grant the Motion on the merits, however, the same standard does not guide its determination whether, and how much, to award in damages. Televideo Systems, Inc. 826 F.2d at

917. In an ERISA case based on allegations that an employer failed to make required plan contributions and where the employer was delinquent at the time the action is filed, upon entry of default judgement against the employer, a court must award damages according to the statutory scheme outlined in 29 U.S.C.

§ 1132(g)(2). Northwest Administrators, Inc. v. Albertson's, Inc., 104 F.3d 253, 257 (9th Cir. 1996). However, "[p]laintiff[s] ha[ve] the burden of proving damages through testimony or written affidavit." Board of Trustees of the Boilermaker Vacation Trust v. Skelly, Inc., 389 F. Supp. 2d 1222, 1226 (N.D. Cal. 2005).

Finally, when a motion for default judgment requests injunctive relief, the already strong policy favoring a decision on the merits is strengthened. Wright, Miller & Kane Federal Practice and Procedure Civil 3d § 2693.

IV. DISCUSSION

A. Service of Process

Service of process against both Defendants was adequate. Federal Rule of Civil Procedure 4(e) allows service upon an individual by personally delivering to the individual the summons and complaint. Fed. R. Civ. P. 4(e)(2). Rule 4(h) allows service upon a corporation by personally delivering the summons and complaint to the corporation's authorized agent. Fed. R. Civ. P. 4(h)(2). On April 10, 2006, a copy of the Complaint, Summons, and other filings were personally delivered to Defendant Anderson. See Docket No. 5. Simultaneously, the summons and complaint as to Defendant Dronkanoki, Inc. was personally delivered to Travis

Anderson as Dronkanoki, Inc.'s authorized agent. See Id.

B. Merits of Motion

Accepting the allegations in the Complaint as true, as it must, the Court finds that Eitel factors weigh in favor of entering default judgment.

1. Prejudice

Plaintiffs would be prejudiced absent entry of default judgment. According to Plaintiffs' Motion, which is not disputed by Defendants, Defendants' failure to make required contributions has caused Plaintiffs harm by denying benefits to the Trust Funds' beneficiaries and by denying "sufficient funds" to the Trust Funds. Mot. at 4. Without the entry of a default judgment, it appears that Plaintiffs would not have a remedy for these harms. Such a situation qualifies as prejudice. See PepsiCo, Inc. v. California Security Cans, 238 F. Supp. 2d 1172, 1177 (C.D. Cal. 2002).

2. Merits of Plaintiffs' Substantive Claims

Plaintiffs' substantive claims against both Defendants are meritorious.

Attached to the Declaration of John Hagan submitted in support of the Motion are documents showing that Defendant Anderson, as president of Dronkanoki, Inc., signed a Memorandum Agreement with Local Union No. 185 of Northern California on January 19, 2004 ("Memorandum Agreement"). See Hagan Decl., Exs. A-B. The Memorandum Agreement *inter alia* obligates signatory employers to "comply with all wages, hours, and working conditions set forth in the the Laborers' Master Agreement for Northern

1 California [("Master Agreement")] and "to pay all sums of money
2 for each hour paid for or worked by employees performing work
3 covered by said Master Agreement to each and every all and
4 singular of the Trust Funds specified in said Master Agreement . .
5 . and to accept and assume and be bound by all of the obligations
6 of any trust agreement, plan, or rules or any amendments,
7 modifications, or changes, thereof . . . , including the
8 obligation to pay liquidated damages and other sums due upon
9 delinquency as provided in said trust agreements." Id., Ex. B.

10 The Master Agreement, also attached to Hagan's Declaration,
11 lists, with slightly modified names, the Trust Funds, and
12 establishes a schedule by which employers are obligated to
13 contribute to them. See Id., Ex. C.

14 The Complaint alleges that the Trust Funds are "employee
15 benefit plans created by written trust agreements subject to and
16 pursuant to . . ERISA." Compl. at 2. The Complaint further
17 alleges that Defendant Dronkanoki, Inc. is an employer in an
18 industry affecting commerce, that Defendant Anderson owns,
19 operates and controls Dronkanoki, Inc., and that "Dronkanoki Inc.
20 and Travis Dean Anderson constitute a single employer." Id. at 3.

21 According to the Complaint, and in line with the documentary
22 evidence discussed above, Defendants entered into the Memorandum
23 Agreement with the Northern District Council of Laborers on
24 January 19, 2004. Id. at 3. The Complaint terms the Memorandum
25 Agreement a "written collective bargaining agreement." Id. The
26 Complaint alleges, again in line with the documentary evidence,
27 that by entering into the Memorandum Agreement, the Defendants
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1 bound themselves to comply with the Master Agreement and, thus,
2 the trust agreements which establish the Trust Funds as well. Id.

3 Pursuant to these agreements, the Complaint alleges,
4 Defendants were required to make certain contributions to the
5 Trust Funds, and allow Plaintiffs access to their books and
6 records to determine the amount the Trust Funds were due. Id. at
7 4-5.

8 According to the Complaint, over the last two years,
9 Defendants have failed to comply with these obligations, by
10 failing to make certain required contributions and denying the
11 Trust Funds the required access. Id. at 4. Section 515 of ERISA
12 states:

13 Every employer who is obligated to make contributions to
14 a multiemployer plan under the terms of the plan or
15 under the terms of a collectively bargained agreement
16 shall, to the extent not inconsistent with law, make
such contributions in accordance with the terms and
conditions of such plan or such agreement.

17 29 U.S.C. § 1145. Plaintiffs' claim that Defendants have breached
18 their obligations under ERISA to make contributions to the Trust
19 Funds therefore has merit.

20 On the basis of Plaintiffs' undisputed allegation in the
21 Complaint that the Defendants constitute a single employer,
22 Plaintiffs' claim that both Defendants should be held jointly and
23 severally liable for any liability flowing from these breaches
24 also has merit.

25 3. Sufficiency of the Complaint

26 The Complaint recites the basic allegations on which the
27 Court based its finding above that Plaintiffs' substantive claims
28

1 had merit. The Court, therefore, finds that the Complaint is
2 sufficient.

3 4. Other Factors

4 None of the remaining Eitel factors dissuade the Court from
5 entering a default judgment against Defendants. The sum of money
6 at stake in the action, including attorneys' fees is \$23,012.82,
7 Mem. at 11. While not insignificant, this amount is not
8 particularly large. As the case turns upon a set of obligations
9 clearly stated in written agreements, and Defendants have been
10 served with the Complaint, which alleges Defendants' breach of
11 those obligations, there does not seem a strong possibility of a
12 dispute regarding material facts. There is also no indication
13 that Defendants failed to respond due to excusable neglect.
14 Finally, while the policy underlying the Federal Rules of
15 Procedure favors a decision on the merits, it is not controlling
16 in light of the other factors which point to the appropriateness
17 of entering default judgment in this case.

18 The Court therefore finds that entering default judgment is
19 warranted.

20 C. Remedy

21 Because the Court finds that Plaintiffs are entitled to entry
22 of a default judgment on their § 1145 claim, and the Defendants
23 were delinquent at the time Plaintiffs' action was filed, it is
24 required to award Plaintiffs the following types of relief: (A)
25 the unpaid contributions, (B) interest on the unpaid
26 contributions, (C) an amount equal to the greater of interest on
27 the unpaid contributions, or liquidated damages provided for under
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the plan in an amount not in excess of 20 percent of the amount of unpaid contributions; (D) reasonable attorney's fees and costs, and (E) such other legal or equitable relief as the court deems appropriate. 29 U.S.C. § 1132(g)(2); see Northwest Administrators, Inc., 104 F.3d at 257. However, it will only award damages which Plaintiffs have proved up. See Board of Trustees of the Boilermaker Vacation Trust, 389 F. Supp. 2d at 1226.

1. Unpaid Contributions

According to Plaintiffs' Motion, they are owed \$13,513.35 for contributions unpaid by Defendants during the period from June 2005 to December 2005. Mem. at 8.

In support, Plaintiffs submit: the declaration of John Hagan, Accounts Receivable Manager of the office which provides administrative services to the Trust Funds, see Hagan Decl., ¶ 1; "employer reports" for the months of September 2005 (apparently filled out and signed by Defendant Anderson on November 13, 2005), October 2005 (apparently filled out and signed by Defendant Anderson on November 13, 2005), November 2005 (apparently filled out and signed by Defendant Anderson on January 6, 2006),¹ and December 2005 (apparently filled out and signed by Defendant Anderson on January 10, 2006),² which respectively show the

¹The actual date next to what appears to be Defendant Anderson's signature actually reads "1/06/05." The Court assumes that this is in error, as the report is clearly for November 2005.

²The actual date next to what appears to be Defendant Anderson's signature actually reads "1/10/05." The Court assumes that this is in error, as the report is clearly for December 2005.

1 Defendants owing contributions of \$9,878.50, \$6,123.75, \$3,312.00,
2 and \$1,207.50 ("Employer Reports"), see id., Ex. G; a single
3 employee's "payroll check stub worksheet" which shows Defendants
4 having under-reported the employee's hours for June and over-
5 reporting the employee's hours for July, and which demands \$880.00
6 in contributions ("Payroll Worksheet"), see id., Ex. H; a table
7 prepared on March 3, 2006 by a member of Mr. Hagan's staff which
8 shows Defendant Dronkanoki owing a total of \$21,092.00 in unpaid
9 contributions ("March 3rd Table"), see id., Ex. I; and a table
10 prepared on June 6, 2006 by a member of Mr. Hagan's staff which
11 shows Defendant Dronkanoki owing a total of \$13,513.13 in unpaid
12 contributions ("June 6th Table"), see id., Ex. F.

13 The contribution rates in the Employer Reports match the
14 rates recited in the Master Agreement as amended. See id., Exs.
15 C, D, G. The March 3rd Table lists contribution amounts unpaid to
16 particular Trust Funds which match the amounts Defendant Anderson
17 listed as owing in the Employer Reports. See id. at Exs. G, I.
18 The June 6th Table, according to Hagan's Declaration, reflects a
19 reduction of these figures by the amount which the Trust Funds
20 received in payments following the creation of the March 3rd
21 Table. Id., ¶ 17. The Court finds that Plaintiffs have met
22 their burden of proof as to Defendants' under-payment of
23 contributions to the Trust Funds for the months of September 2005,
24 October 2005, November 2005, and December 2005 in the total amount
25 of \$12,638.95.

26 The Court, however, finds that Plaintiffs have not met their
27 burden as to \$874.40 which Plaintiffs claim they are owed as a
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1 result of Defendants' alleged under-reporting of hours for a
2 single employee. The Hagan Declaration states:

3 [Defendants] under-reported for June a total of 80 hours
4 of work, yielding (a gross figure of) \$888.00 owed for
5 June, and [Defendants] over-reported 90 hours for July,
6 which would yield a credit. Thus, [the March 3rd Table]
7 and the later [June 6th Table] show 80 hours and a (net
8 figure) of \$874.40 owed for June 2005.

9 Id., ¶ 18. This description accurately reflects the submitted
10 documentation; however, it does not sufficiently explain how the
11 figures it recites were reached. In particular, there is no
12 explanation how application of a credit for over-reporting 90
13 hours reduced the debt for under-reporting 80 hours by only \$5.60.
14 The Court therefore declines to order compensation for the \$874.40
15 which Plaintiffs claim they are owed on these grounds.

16 2. Liquidated Damages

17 Plaintiffs have requested liquidated damages in the amount of
18 \$2,250. Mem. at 9. Under 29 U.S.C. § 1132(g)(2)(C)(ii),
19 liquidated damages are recoverable if provided for in the plan
20 agreement and do not equal more than 20% of unpaid contributions
21 awarded. The Master agreement states:

22 Subject to accounting verification, liquidated damages
23 shall be assessed on delinquent contributions at a flat
24 rate of one hundred and fifty dollars (\$150.00) per
25 month.

26 Hagan Decl., Ex. C. Attached to Hagan's declaration is a table
27 labeled "Statement of Liquidated Damages Due" which shows an
28 assessment against Defendants of \$150 per month in liquidated
damages for delinquencies every month beginning in February 2004
through December 2005, for a total of \$2,500.00. See Id., Ex. E.
However, except for the documents discussed above covering

1 September 2005 to December 2005, Plaintiffs provide no back-up
2 documentation showing that Defendants were in fact delinquent
3 paying their contributions during this period. A simple
4 recitation of money owed is not sufficient to prove up damages in
5 a motion for default judgment. See Walters v. Statewide Concrete
6 Barrier, Inc., C-04-2559 JSW, 2006 WL 2527776, *7-8 (N.D. Cal.
7 Aug. 30, 2006). Thus, the Court awards only liquidated damages
8 for the months of September 2005 to December 2005: \$600.

9 3. Pre-Judgment Interest

10 Plaintiffs request a total of \$2,465.73 in pre-judgment
11 interest on Defendants' unpaid contributions. Mem. at 9.
12 Interest on unpaid contributions based on a rate set by the
13 employee benefit plan is recoverable under 29 U.S.C
14 § 1132(g)(C)(i), even if liquidated damages have already been
15 awarded. Northwest Administrators, Inc. v. A.D. Automotive
16 Distributors Inc., No. C-05-2880 SC, 2006 WL 1626940, *5 (N.D.
17 Cal. June 12, 2006). The Master Agreement provides that "[a]ll
18 delinquent contributions shall bear simple interest at the rate of
19 one and one-half percent (1.5%) per month until receipt of
20 payment." See Hagan Decl., Ex. C.

21 The same problem afflicts Plaintiffs' request for prejudgment
22 interest which afflicts their request for liquidated damages.
23 Except for the months of September 2005 through December 2005,
24 Plaintiffs provide no back-up documentation for their claim that
25 contributions were delinquent and so no substantiation to their
26 claim that interest is due for these other months.

27 The Court is also not completely satisfied with the
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1 documentation submitted in support for interest claimed on unpaid
2 contributions for the months of September 2005 through December
3 2005. For example, the Statement of Liquidated Damages Due lists
4 \$182.32 in interest due on Defendants' delinquent September 2005
5 "Vacation Holiday" contribution. See Hagan Decl., Ex. E. The
6 March 3rd Table lists \$1,958.52 in unpaid September 2005 Vacation
7 Holiday Contributions. See id. Ex. I. One and half percent of
8 \$1,958.52 is \$29.38, which multiplied by 8 (the number of months
9 by which the contribution was late when the interest figures in
10 the Statement of Liquidated Damages Due were calculated, see id.,
11 Ex. E.) equals \$235.02. The Court assumes the discrepancy between
12 this amount and the amount now requested, \$182.32, is due to the
13 partial payment which Defendants made in early 2006. see id., ¶
14 17. Thus, the Court will accept the interest figures for
15 September 2005 through December 2005 listed on the Statement of
16 Liquidated Damages Due, but it will not, as requested by
17 Plaintiffs, see Mem. at 9, attempt the impossible task of
18 extrapolating out from these figures the interest due at the date
19 of this ruling.³

20 Therefore, the Court awards a total of \$1661.70 in
21 prejudgment interest for unpaid contributions for the months of
22 September 2005 through December 2005.

23 4. Attorney's Fees and Costs

24 Plaintiffs seek \$441.24 in costs and \$4,342.50 in attorney's

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26 ³Without information regarding the amount by which Defendants
27 satisfied their delinquencies to particular Trust Funds and the
28 exact date on which this was done, such a calculation is not
possible. See Hagan Decl., ¶ 13.

1 fees. Mem. at 9. When plan documentation makes provisions for it,
2 Section 1132(g)(D) allows the recovery of reasonable attorney's
3 fees and costs incurred in seeking payment of unpaid
4 contributions. See 29 U.S.C. 1132(g)(D). The Trust Agreements
5 make such a provision. Leigh Decl., Ex. C.

6 a. Costs

7 Plaintiffs base their demand for \$441.24 in costs on filing
8 fees and the costs of personally serving the Defendants. See
9 Leigh Decl., ¶ 13. The Ninth Circuit has held in the context of
10 20 U.S.C. § 1132(g)(1) that courts are allowed to "award only the
11 types of 'costs' allowed by 28 U.S.C. § 1920, and only in the
12 amounts allowed by section 1920 itself, by 28 U.S.C. § 1821 or by
13 similar such provisions," Arguendo v. Mutual of Omaha Cos., 75
14 F.3d 541, 544 (9th Cir. 1996), a standard which is logically
15 applicable to the award of costs under § 1132(g)(2) as well. A.D.
16 Automotive Distributors Inc.,, 2006 WL 1626940, at *7 (N.D. Cal.
17 June 12, 2006).

18 Plaintiffs are entitled to an award of costs in the amount of
19 the filing fees, including E-Filing fees, in the amount of
20 \$262.24, and the service-of-process fees of \$179.00. See 28
21 U.S.C. § 1920 (stating that a court may tax as costs fees of the
22 clerk and marshal); Civ. L.R. 54-3(a)(1) ("The Clerk's filing fee
23 is allowable if paid by the claimant."); Civ. L.R. 54-3(a)(2)
24 ("Fees for service of process by someone other than the marshal
25 acting pursuant to FRCivP 4(c), are allowable to the extent
26 reasonably required and actually incurred."). The Court therefore
27 awards costs in the amount of \$441.24.

b. Attorney's Fees

Plaintiffs' request of \$4,342.50 in attorney's fees is based on 19.3 hours of attorney time billed at \$225.00 per hour. See Leigh Decl., ¶ 13. In support, Plaintiffs submit a billing statement listing the times which Plaintiffs' attorneys billed on the matter. See Leigh Decl., ¶ 13, Ex. F.

In determining the amount of attorney's fees to award in an ERISA action, the Court applies "a hybrid loadstar/multiplier approach." D'Emanuele v. Montgomery Ward & Co., Inc., 904 F.2d 1379, 1383 (9th Cir. 1990) overruled on other grounds by Burlington v. Dague, 505 U.S. 557(1992). This approach involves first determining the loadstar amount and then making any upward or downward adjustments as the specifics of the situation demand, such adjustments being the exception rather than the norm. Id. The loadstar amount is calculated by "multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate." Id.

Counsel's rate of \$225.00, while on the high end, is reasonable in view of "prevailing market rate[s]." Id. at 1384.

However, the number of hours billed is not reasonable given the relevant simplicity of the case and level of activity in it. By way of comparison, in two similar case, Peters, 2000 U.S. Dist. LEXIS 19065, at *7 and A.D. Automotive Distributors Inc.,, 2006 WL 1626940, at *7, the attorneys spent respectively five and four hours working on their cases. Even compared to a similar case in which the court awarded fees for significantly larger numbers of hours billed, see Walters v. Shaw/Guehmann Corp., No. C-04058 WHA,

2004 U.S. Dist. LEXIS 11992, *9 (N.D. Cal. Apr. 15, 2004)(approximately 12 hours), the number of hours for which Plaintiff's counsel requests compensation is high.

Counsel in Shaw/Guehmann Corp. spent a total of 4 hours preparing the motion for default judgment and associated declarations. Plaintiffs' counsel spent 11.2 hours on the same, see Leigh Decl., Ex. F., almost three times what plaintiff's counsel in A.D. Automotive Distributors spent working on his entire case. Thus, 11.2 hours is not reasonable, especially in light of the frequency with which Plaintiffs' counsel's law firm handles these types of cases, a factor presumably reflected in Plaintiffs' counsel's relatively high billing rate.⁴ Thus, the Court reduces to 4 the amount of hours Plaintiffs' counsel may bill for preparing their Motion and associated declarations.

The Court additionally declines to award attorney's fees in the amounts requested for the following tasks on the grounds that they appear unnecessary and/or excessive, and so smack of padding:

1) 3/22/06, 30 minutes, "Received and reviewed ADR schedule and CMC requirements. Work on Disclosures." Leigh Decl., Ex. F. Defendants had not yet answered, and so there was no reason to work on disclosures, which, indeed, Plaintiffs' counsel appears never to have worked on again. This figure is therefore reduced by half to 15 minutes, or .25 of an hour.

2) 5/10/06, 20 minutes; 5/23/06, 1 hour and 30 minutes;

⁴By way of comparison, the attorneys in Peters, 2000 U.S. Dist. LEXIS 19065, at *7, and A.D. Automotive Distributors Inc., 2006 WL 1626940, at *7, both charged a rate of \$180 per hour, while the attorney in Shaw/Guehmann Corp., 2004 U.S. Dist. LEXIS 11992, at *9, charged \$150 per hour. It is additionally notable that the attorney in A.D. Automotive Distributors Inc. is one of the local bar's most experienced litigators involved in this type of action.

1 5/25/06, 30 minutes; 6/6/06, 1 hour and 20 minutes; 6/8/06,
2 30 minutes. Id. All of these entries either refer to tasks
3 subsumed within preparation of the Motion or which have no
4 apparent purpose given the posture of the case at the time,
5 for example, "Notes for Discovery" on 6/6/06. The Court
6 therefore declines to award any fees for these tasks.

7 3) 6/29/06, 1 hour, detailing tasks related to a phone call
8 from the Court regarding scheduling. Id. The Court is aware
9 the phone calls in question were very brief, and cannot
10 imagine that the other tasks listed, such as "Memo to
11 secretary regarding same and E-filing notice of same" could
12 have accounted for the rest of the time claimed. Id. The
13 Court therefore reduces this amount to 30 minutes or .5 of an
14 hour.

15 Reflecting these modifications, the court finds that the
16 loadstar amount appropriate to the work done by Plaintiffs'
17 counsel is equal to 7.85 hours, which billed at a rate of \$225.00
18 per hour equals \$1,766.25. Finding no reason to modify that
19 figure upward or downward due to exceptional circumstances, the
20 Court awards that amount in attorneys fees to Plaintiffs.

21 5. Equitable Relief

22 In addition to damages, Plaintiffs request that the Court
23 issue a mandatory injunction compelling Defendants to permit
24 Plaintiffs to audit Defendants' financial records. Mem. at 10.
25 Section 1132(g)(2)(E) empowers courts to grant such equitable
26 relief as they deem appropriate. 29 U.S.C. § 1132(g)(2)(E). The
27 authority to conduct such an audit is granted to the Trust Funds
28 by the Trust Agreements. See, e.g., Leigh Decl., Ex. C. In light
of this grant of authority and Defendants' pattern of
delinquencies, the court grants Plaintiffs' request for injunction
to allow Plaintiffs to conduct an audit, but only against
Defendant Dronkanoki and limited to records regarding Defendant
Dronkanoki's employment practices.

6. Post-Judgment Interest, Costs, and Attorney's Fees

Plaintiffs also request post-judgment interest, costs, and attorney's fees. The Court declines to award such damages. The statutory remedies provided in Section 1132(g)(2) for unpaid contributions are exclusive. See Parkhurst v. Armstrong Steel Erectors, Inc., 901 F.2d 796, 797 (9th Cir. 1990). And, as the foregoing discussion demonstrates, a plaintiff's entitlement to those remedies is subject to its proving up its entitlement to them. The Court declines the invitation to allow Plaintiffs to avoid this requirement through issuance of an amorphous forward-looking award of potential damages. If Defendants continue to be delinquent, they will be subject to another suit by Plaintiffs and thus another set of damages. The Court feels this is, and should be, sufficient incentive for Defendants to cease being delinquent in its contributions going forward.

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